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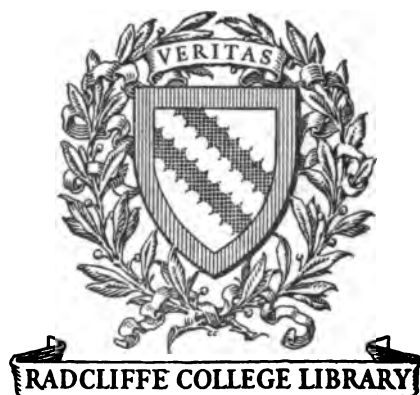
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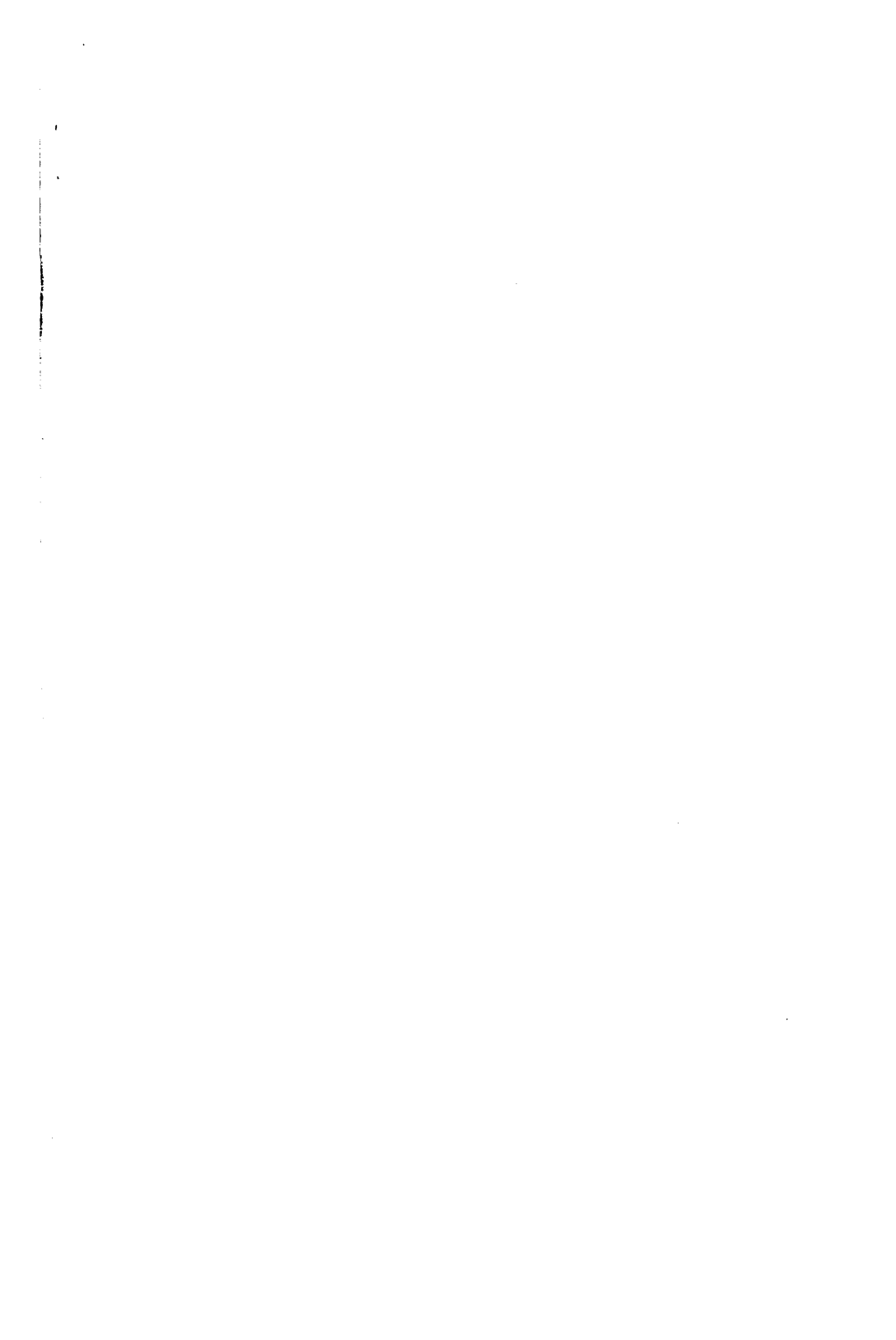
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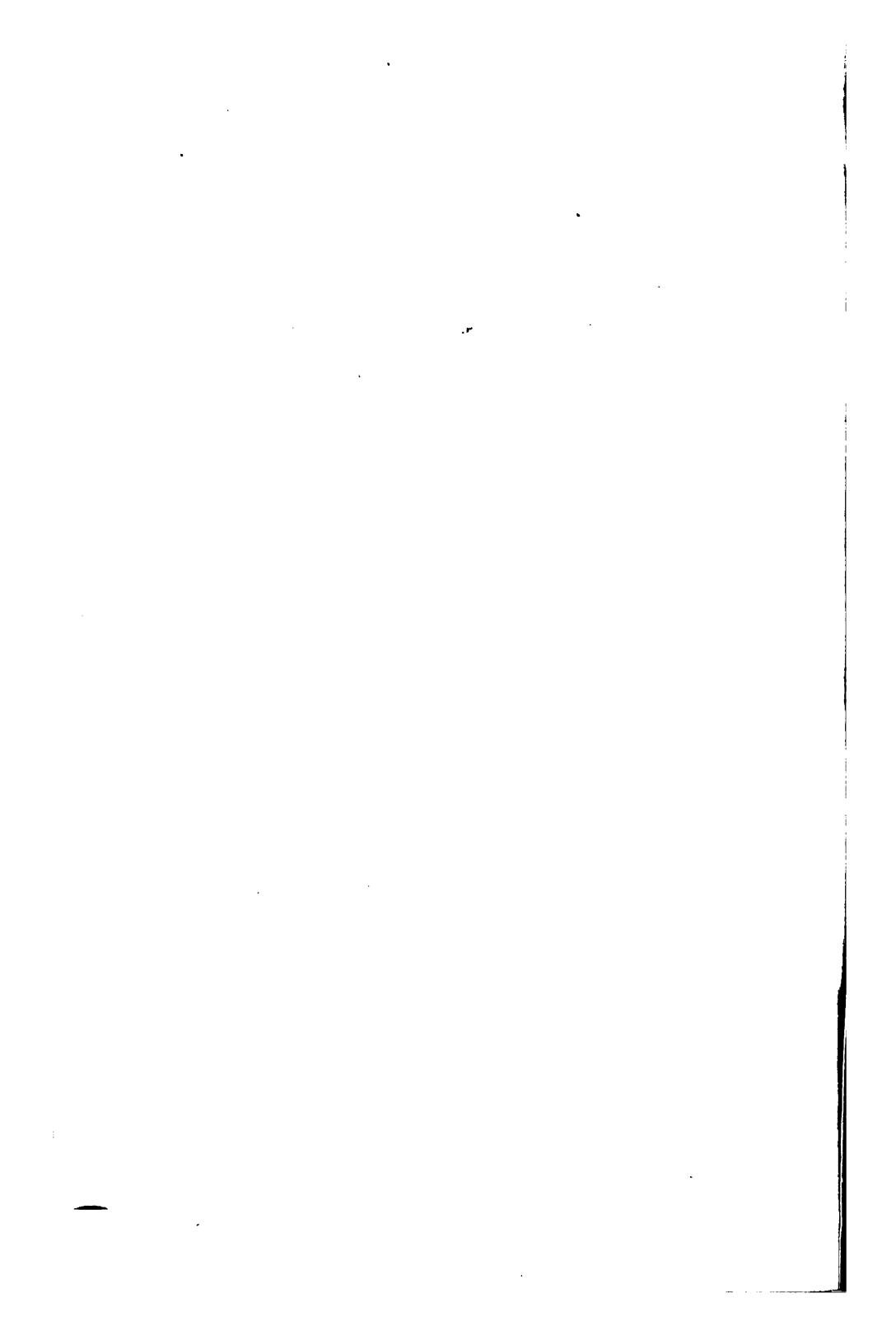
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# LEGAL CONDITION OF WOMEN

IN

MASSACHUSETTS,

IN 1886.

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By SAMUEL E. SEWALL.

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# LEGAL CONDITION OF WOMEN

IN MASSACHUSETTS IN 1886.

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This little tract was originally prepared in 1868. A revised edition was issued in 1870, containing notices of the changes in the laws relating to women which had been made since 1868. Statutes passed afterwards led to the publication of a third edition in 1875. Since that year, so extensive and important has been the legislation affecting women that a new edition is required. Very opportunely the legislature in 1882 issued the volume of Public Statutes intended to embody all statutes in force up to that year. I have changed my original plan so far as to add references to the Public Statutes, which may be a convenience to some readers and will embarrass none.

The object of the following pages is to present an outline of the law of Massachusetts affecting women, as distinguished from men, with occasional comments. And especially to point out how unfairly the dependent has been in past ages, and is at the present time, treated by the dominant sex, the vast improvement in the condition of the former made by recent legislation, and how much is still required by simple justice for its full relief.

The law of this Commonwealth in this respect is so like that of most of the States, that a large part of what I write will apply to many of the others.

Nothing more than a mere sketch, and that an imperfect one, is possible within the limits that I propose. I shall, however, try to exhibit the most important features of the

system; though even of these many of the qualifications, distinctions and exceptions will be necessarily passed without notice. To do justice to the subject would require a large volume. It may be also added that legal remedies and the modes of enforcing them must for the most part be left unnoticed.

Most people have a general idea of the legal disabilities of the female sex. But very few, except lawyers, understand in their full extent the annoyance and oppression to which our law subjects women, until some hard case directs their attention to a peculiar form of this injustice.

The Declaration of Independence proclaims that "all men are created equal" and have inalienable rights. We all admit this. And it is conceded that the word "men" here includes persons of both sexes, and the word "equal" means equality of rights, not of capacity. When Jefferson wrote these words, which have been cited many thousand times and are still worth citing, he was, no doubt, far from thinking of all the applications of the truth he was publishing. The Constitution of Massachusetts, following the Declaration, says, "All men are born free and equal," and have "unalienable rights." The Constitution of Massachusetts denies suffrage to woman, and thus is inconsistent with itself, and also violates the great principle of the Declaration of Independence, the organic law of the nation, by giving man this great right and refusing it to her who is entitled to it as his equal.

The denial of this franchise is the most serious wrong done to women, since granting them the ballot would, no doubt, lead eventually to the redress of their other wrongs.

This refusal of the ballot perpetuates the stigma of inferiority on more than one half of the whole population of the State. The effect is obvious. We look upon the ballot

as one of the great educators of male citizens, because it interests them in public affairs, and leads them to consider and discuss important questions of legislation. Our Constitution not only shuts out this great avenue of education from our female citizens, but the legal inferiority tends in every direction to produce the mental inferiority which it presupposes. It cramps thought and paralyzes effort.

The secondary effects of this inferiority are equally if not more disastrous. Men fall short of the higher character which would be infused into them through the superior moral and intellectual power which women would acquire in consequence of gaining the great franchise. Our legislation is degraded, and our society debased, because the two sexes do not associate as equals in the most important business of the nation.

It is hardly necessary to add, that to deprive any class of persons who pay taxes of the right of voting, violates the principle for which our fathers contended during the revolution, that taxation without representation is tyranny.

Many thousands of women pay taxes in Massachusetts, some of them very large ones. In 1871, women paid nearly two million dollars of the sums raised by taxation on real and personal property in cities and towns in Massachusetts, being very nearly one eleventh of the whole amount assessed. In Boston, in 1873, women paid nearly thirteen hundred thousand dollars of the taxes levied by the city, being more than one tenth of the whole amount.\* The taxes paid by women now are, no doubt, much larger than they were in 1873. Yet women have no voice in directing the appropriation of their money, are compelled to submit to enactments

\* William I. Bowditch, Esq., published a pamphlet called "Taxation of Women in Massachusetts." It is full of valuable historical and statistical matter bearing on the subject, with an able commentary. It ought to be read by all interested in the elevation of women.

from which their moral instinct revolts, and have no power to urge, effectually, reforms which they believe to be all-important. Since women are not allowed to vote, they are generally considered ineligible to any public office, and incapable of holding any by appointment of the governor. I am far from assenting to this view of the law; for, in my opinion, any person, even an alien or a woman, is legally capable of holding any office, unless expressly prohibited by the Constitution or statutes.

In connection with the ballot it ought to be remembered that senators and representatives in the legislature, by amendments to the Constitution made in 1857, are apportioned according to the number of legal votes in the respective voting districts. Not making population, but the number of a particular class, the basis of representation, is the height of injustice,—an old one to be sure in Massachusetts. The women, the foreigners, the men who cannot read and write, or do not choose to vote, and the children, in this apportionment, are not counted any more than if they did not exist. It is no answer to the charge of injustice to say it is of no consequence that a few places like Lowell and Lawrence have fewer representatives than they would if population regulated representation. The system, I repeat, is unjust. And the contempt of women that it discloses is discreditable to Massachusetts.

A woman born in the United States is a citizen, though deprived of the ballot. A woman who is a foreigner, but of a race capable of being naturalized, by marrying a citizen, becomes herself a citizen. And if a husband and wife are both foreigners, his naturalization makes her a citizen. Rev. Stats. U. S., § 1994.

Governor Claflin, in 1871, nominated several ladies for justices of the peace. Some of the Council, doubting whether

women could hold the office, the opinion of the judges of the Supreme Court was asked on the subject. The judges delivered an opinion that women could not be such justices. The ground of decision appears to be that the office of justice of the peace under the constitution is judicial, and therefore cannot be held by a woman, according to the common law, which had not been altered by the constitution. I doubt the soundness of this decision. But it is needless to argue the question here. The opinion, however, does not seem to make any change in the constitution necessary. The legislature ought to pass an act declaring women capable of holding any office which the constitution does not prohibit them from holding. Though the legislature cannot repeal the constitution, it can remedy the defects of the common law.

An act passed in 1883 has partially remedied the narrowness of the common law by allowing the governor to appoint women special commissioners, to take acknowledgments of deeds, to administer oaths, and take depositions, important functions of justices of the peace.

The Supreme Court in 1881, following the lead of their decision in 1871, decided that a woman could not be admitted as a member of the bar. It is pleasant to record that the legislature in 1882, without any serious opposition, passed an act which enables female citizens to be admitted to the bar on the same terms as male.

Practically, women are still disabled from holding many offices for which they are admirably qualified, even by the judgment of those who regard them as unfit for other positions. Far the greater part of the public school teachers in Massachusetts are women. Male teachers are but a small fraction of the whole number. Yet we find no woman on the Board of Education. I had added, in a former edition of this tract, that there was no woman "on the Board of Trustees of

the State Industrial School for Girls at Lancaster, or, except in a very few cases, on a School Committee ;” and showed how desirable it was to have women as official visitors. The change on this subject, in public opinion and the law, in the few years which have passed since the tract first appeared, is truly wonderful and most encouraging.

Monroe, the smallest town in the State, set the example of having a woman on its School Committee for several years before 1868. But in the years commencing with 1868, a large number of women have been chosen on School Committees in different cities and towns. Worcester and Lynn were among the first to place women in this position.

Three women were chosen members of the School Committee in Boston for 1874. The School Committee declared them ineligible. One of the ladies applied to the Supreme Court to be reinstated. The judges refused to decide the question of her legal capacity to be a member of a school committee, but dismissed her petition on the ground that the charter of the city gave the School Committee power to decide on the qualifications of members of the board. The legislature, as soon as the decision was known, passed with great alacrity and almost by acclamation, “An act to *declare* women eligible to serve as members of school committees.” There can be no doubt that within a few years women will be members of school committees in most of the towns of the State.

Since 1874 their numbers on school committees has much increased.

In 1875 I wrote, “No woman is to be found on the Board of State Charities, or as an Overseer of the Poor, or as a Trustee of a Lunatic Hospital.”

The progress made since that time is quite encouraging. Governor Long placed a lady on the Board of Health, Lunacy and Charity, which superseded the Board of State

Charities. In 1883 her capacity to hold the position having been denied by Governor Butler, was sustained by the Supreme Court. In 1868, an Advisory Board of women for the Industrial School at Lancaster was created, and in 1870 an Advisory Board of women, as overseers, was made to aid the Commissioners of Prisons. These subsidiary and dependent boards were abolished in 1879; and by acts passed in that year a board of Commissioners of Prisons was created of seven persons, two of them women, Pub. Stat., ch. 219, § 1, and also a board of seven trustees of the State Primary and Reform Schools, two of them women. Pub. Stat., ch. 89, § 1. In 1884 a Board of Trustees of the State Almshouse and the State Workhouse was created of seven persons, two of them women. The legislature in 1884 superseded the Boards of Trustees of the State Lunatic Hospitals, each having five members, by boards of seven persons each, consisting of five men and two women.

It is not necessary to specify here the functions of these boards, or the terms of office of their members. But it marks the growth of public opinion to have women admitted on an equal footing with men to such important public duties.

In 1884 an act was passed requiring, from the first day of January, 1885, the appointment of an educated female physician as assistant physician in each of the State Lunatic Hospitals.

An act of 1874 established a reformatory prison for women. All its officers are required to be women except the superintendent, treasurer and steward, who may be either men or women. Pub. Stats., ch. 221, §§ 43-53. In 1883 the offices of treasurer and steward were abolished, their duties being transferred to the superintendent and a steward appointed by her as her agent. The superintendent of this

prison has, from the first, been a woman, and no person, so far as I have heard, has intimated that a man could fill the office better. The creation of a separate reformatory prison for female convicts forms an era in our penal legislation. The principle on which this measure is based is carried out by giving almost the entire administration of the establishment to women.

The prison commissioners are authorized to appoint a man with a salary not exceeding \$1000 a year, to give advice and pecuniary aid to discharged convicts from the State Prison, not exceeding \$3000 a year in all, Pub. Stat., ch. 219, § 26, and to appoint a woman with a salary not exceeding \$700 for similar purposes in regard to female convicts discharged from prison; her salary and the money given them not to exceed \$3000 together. Pub. Stats., ch. 219, § 27. In this case the female convicts seem much more favored than the male, for though the men have \$3000 to be distributed among them, and the women only \$2300, yet if the \$3000 were divided equally among the men, and the \$2300 among the women, the former are so much more numerous than the latter that each woman would get three or four times as much as each man. The distinction thus made is just, since it is much easier for men to find employment than women.

An Act passed in 1886 provides that "No person shall be ineligible for the office of Overseer of the Poor by reason of sex." This is wise and timely. For, though there was no legal doubt that women could hold the office, and certainly had done so in Brookline, and I believe in other towns, yet there is so strong an impression in the public mind that they cannot hold such offices that it was well to pass the act, to correct the impression. The defect of this statute is that it

does not go far enough and compel every city and town to make part of its overseers women.

This recent legislation, especially in regard to the prison for women, and making women trustees of so many public institutions, and the readiness which municipalities have shown to place women on school committees, are sure omens that the ballot will soon be placed in female hands; for those who have made women public officers cannot long fail to acknowledge that women ought to vote for public officers. The statutes of the last thirty years, in regard to married women, indicated a growing recognition of their capacity, which the common law denied them. Yet, after all, these statutes did nothing but gradually remove servile chains, and aim to place wives on an equal footing with maids, but not with men. The acts which make women public officers are of an entirely different character, and tend to raise both married and single women to legal equality with the other sex.

Still more important is the recent legislation which has given suffrage to women on a single subject. The enabling act was passed in 1879, and was amended in 1881. It appears in the Pub. Stats., ch. 6, §§ 3, 9, 19, and was revised and amended by Stat. 1884, ch. 298, §§ 4, 12, 27, 28.

As the law now stands, any female citizen who is not a pauper, or under guardianship, can vote for members of a school committee, provided she is twenty-one years old, able to read the constitution in the English language, write her name, have resided in the State a year, and in the city or town where she claims a right to vote six months before any election of school committees, and paid a state, county, city or town tax assessed on her or her trustee within two years before that day, has a right to vote for members of a school

committee. In words, the two sexes are equal in regard to voting for school committees.

But, as many thousand men become qualified to vote by paying a poll tax, an assessment to which women were not subject in 1879, an attempt was made to put the two sexes more nearly on an equal footing by the statute providing that any female citizen may in any year on or before September fifteenth, give notice in writing, accompanied by satisfactory evidence, to the assessors that she desires to pay a poll tax and to furnish a true list of her property not exempt from taxation, and she shall be assessed a tax for her poll not exceeding fifty cents, and for her estate, by paying which, if otherwise qualified, she gains the right to vote for two years from the time the tax is assessed on her. The law also provides that the name of every qualified female voter shall be placed and kept on a voting list so long as she continues qualified by residence and tax paying. The revision of 1884 adds "provided that the facts relating to residence shall be furnished to the registrar each year prior to registration." This last provision is very unjust, as it imposes a burden on women which men are not subject to. This legislation, though very defective, in not giving women the right of voting in town meetings on all subjects relating to schools, is yet of inestimable value, not because the power expressly granted is great, but because it is the first occasion in the long history of Massachusetts in which a purely political privilege has been given to women; and that marks the beginning of a new era in which the equality of the sexes is to be recognized in a manner heretofore unknown.

An act passed in 1886 requires assessors and assistant assessors in May and June every year for the purpose of making out a list of persons liable to pay a poll tax, to visit every

house in their respective cities and towns, "and make a true list" — "of all women who personally or in writing express to an assessor or assistant assessor a desire to be assessed for a poll tax, together with their occupation and age as near as may be, and residence on the first day in the preceding year." The assessors or assistants are required to furnish the list or a copy to the registrars of voters. This act, it is to be hoped, will relieve some women who wish to vote from the annoyance of going before assessors and taking oath. Practically it does not place women on an equality with men, who are all registered.

Women are not required to serve in the militia and pay no poll tax unless they voluntarily pay the fifty cents before mentioned. These are proper exemptions at the present time. When legal equality is given to the sexes, women ought to pay a poll tax. They should never be called on to perform military duty.

The statute exempts from taxation property to the amount of \$500, of a widow or unmarried female, and of any minor whose father is deceased, if one's whole estate not otherwise exempted from taxation does not exceed \$1000. Pub. Stat. ch. 11, § 5.

Women are not allowed to serve on juries. This may be regarded either as an exemption or a disability. Yet it is very clear that there are cases in which women ought to be required to serve as jurors. Where one of the parties to a suit is a woman, a portion of the jurors ought always to be of her own sex. As the novelist can depict persons of one's own sex more successfully than one can those of the other, so female jurors would be likely to judge better of the truth, intentions, character and sanity of female parties to actions, and of female witnesses, than men.

No woman can be arrested on mesne process in any civil

action except for tort; and not for tort where the suit is for slander or libel. Pub. Stat. ch. 162, § 3. Nor can a woman be taken on an execution for debt. But on an execution for a debt of at least twenty dollars, after a demand of payment has been made on her by the officer holding the execution, she may be cited before the court of insolvency to disclose her property, and if she neglects to appear she may, on process issued by the court, be brought before the judge and compelled to submit to an examination in regard to her property, and is liable to be imprisoned for contempt if she disobeys any order of the court in regard to her property liable for the debt. Pub. Stat., ch. 162, §§ 6 to 13.

I do not propose here to discuss the great questions whether the two sexes should pursue all branches of study together, or what is the best liberal education for women. But the inequality of the position of the two sexes in respect to educational advantages is still striking.

This tract, when it first appeared, said there are no colleges in Massachusetts open to women; and that they are also denied admission into medical and theological schools; and that though they have the greatest zeal and aptitude for the study of medicine and theology, and become useful physicians and ministers of the gospel, yet they are obliged to qualify themselves for these professions under the greatest difficulties. It gives me great pleasure to modify these remarks by saying that the recently founded and flourishing Boston University opens for women its doors to all its undergraduate classes, and all its professional studies. The same is now true of the Massachusetts School of Technology.

Parishes were originally territorial bodies, one frequently being a whole town, or a defined part of a town. It is not, therefore, strange that only the qualified voters of each parochial territory should be allowed to take part in busi-

ness meetings of the parish, and that all other religious societies should adopt a similar rule. This continued the law until 1869, when an act was passed which authorized any parish or religious society to admit to membership women with all the rights and privileges of men. Pub. Stats., ch. 38, § 6. The rule is still imperfect and unjust, for, instead of giving women membership in parishes and religious societies on the same terms as men enjoy, it leaves it for the men in every such body to decide whether the women shall be members or not.

In regard to pauperism, a settlement in any place gives the right to support as a pauper from it. A married woman has the settlement of her husband if he have any within the State, otherwise her own is not lost or suspended by the marriage. Pub. Stat., ch. 83, § 1, cl. 1.

A legitimate child has the settlement of its mother, if the father have none in the State. Pub. Stat., ch. 83, § 1, cl. 2.

An illegitimate child has the settlement of its mother at the time of its birth, if she have any in the State. Pub. Stat., ch. 83, § 1, cl. 3.

A woman twenty-one years of age gains a settlement in any place in the State by five years consecutive residence in it. Pub. Stat., ch. 83, § 1, cl. 6, 7.

A statute passed in 1874 prohibits, under a penalty, the employment in laboring, in any manufacturing establishment, of any minor under eighteen and any woman over that age more than ten hours a day, except to make repairs to prevent the stoppage of machinery. The act, however, permits a different apportionment of the hours of labor, for the sole purpose of giving a shorter day's work for one day of the week, but in no case allows more than sixty hours per week. Pub. Stat., ch. 74, § 4.

By an act passed in 1883 these provisions are extended

to mechanical and mercantile establishments. These acts, though no doubt well intended, are founded, as it regards grown-up women, on a false principle. It supposes women to be too weak and reckless to take proper care of their health. The law as it respects minors is excellent; but men and women should be allowed to regulate their hours of labor for themselves. I cannot but regard it as an insult and injury to women to treat them as children.

The unfortunate mother of an illegitimate child enjoys at least one advantage over her happier sisters; she has the sole care and custody of her minor children, which the father can never interfere with.

Rape is punishable by imprisonment in the State Prison for life, or any term of years at the discretion of the court.

Criminal intercourse with a female child under the age of thirteen years is punished in the same way, the consent of such a child not reducing the enormity of the crime. Until an act passed in 1886, the age of consent was ten years. It might, with propriety, have been raised even beyond thirteen years.

An assault with intent to commit a rape may be punished to the same extent as rape, or by a fine of not exceeding \$1000 and imprisonment in jail not exceeding three years. Pub. Stat., ch. 202, § 28.

An act passed in 1886, provides, in substance, as follows:

SECTION 1. Fraudulently enticing or taking away an unmarried woman of a chaste life and conversation from her father's house or wherever else she may be, for the purpose of prostitution or criminal connection with her, is punished by imprisonment or fine, or both.

SECTION 2. Administering to, or causing to be taken by any woman or girl any drug or thing with intent to stupefy

her for the purpose of criminal connection, is punished by imprisonment or fine, or both.

SECTION 3. The seduction of any "*person*" under the age of eighteen years, of chaste life and conversation, is punished in the same way. The statute, by using the word "*person*," means either male or female.

SECTION 4. Criminal connection with a female idiot or imbecile woman or girl, not amounting to rape, is punished in the same way.

SECTION 5. The owner or manager of any premises who induces or knowingly suffers any girl, under the age of twenty-one years, to resort to, or be in or upon the premises for the purpose of criminal connection, is punishable in the same way.

The imprisonment in all these sections, at the longest, may be three years in the State Prison, and the fine, at the highest, one thousand dollars, but both fine and imprisonment can be reduced at the discretion of the court.

This statute is very creditable to the legislature, as it is a declaration of healthy sentiment against a class of offences which are too frequent and comparatively seldom punished. Even if this law fails to make punishment for such offences common, it must tend, by its action on public opinion, to diminish their number.

The sixth section of this act provides that no person shall be convicted under it upon the evidence of one witness only, unless such witness be corroborated in some material particular. I doubt very much the wisdom of this provision. Cases often happen where one witness makes some statement which is directly denied by another. No judge tells the jury in such a case that the fact stated is unprovable, but directs the jury to decide which of the persons tells the truth, judging from their appearance and mode of testifying,

their conduct in and out of court, and other circumstances proved in the case connected with the disputed question. In the great majority of cases where there is conflicting testimony, judges and juries find no difficulty in deciding where the truth lies. Indeed, there seems no reason for introducing an extraordinary rule of law, which is calculated to screen crime among ignorant jurors and unskilled examining magistrates, who may not construe the statute justly. Where the main fact of a case is usually known only to two persons, such a rule as this is especially likely to impede the course of justice.

Fraudulently and deceitfully enticing away an unmarried female under sixteen years from her residence, in order to effect a clandestine marriage without the consent of the parent, guardian or master under whose care she is living, is punishable by imprisonment or fine, or both. Pub. Stat., ch. 207, § 1.

A woman who conceals the death of her child "which, if born alive, would be a bastard, so that it may not be known whether" it "was born alive or not, or whether it was not murdered, is punishable by fine not exceeding \$100 or imprisonment not exceeding one year." Pub. Stat., ch. 207, § 11.

Until 1876 only women seem to have been punishable as *night-walkers*. The equality of the sexes in this regard was in that year vindicated by a statute which declared men who are common night-walkers subject to the same punishment "as those now deemed common night-walkers." Pub. Stat., ch. 207, § 29.

The mother of a bastard child may compel the father to maintain the child, and assist her in such manner as the court may order. Pub. Stat., ch. 85, § 15.

The inferiority of the female sex is one of the axiomatic

principles of the old law, so strong that one is not surprised to find it over riding natural feeling. The general object of the law of inheritance is to give the property of a person dying intestate to those to whom, if he had made a will, he would have been likely to leave it. It is very rarely, indeed, that one who dies without leaving lineal descendants would not wish his mother, if living, to have a share, at least, of his property. But the law of Massachusetts, until 1876, entirely disregarded this wish by providing that when a person died intestate, leaving no issue, his estate should descend to his father, and if he left no issue nor father, then in equal shares to his mother, brothers and sisters, and the children of any deceased brother or sister by representation. An act passed in that year places the mother in her true position, by providing "that if a person die intestate, leaving no issue, his estate descends to his father and mother, and if he leave no issue nor mother, then to his father; and if he leave no issue nor father, then to his mother." Under both the old and the new rules, the claims of the heirs are subject to the right of a surviving husband or wife of the deceased. Pub. Stats., ch. 125, § 1; ch. 135, § 3.

Another exhibition of the legal inferiority of females appears in partitions. When an estate is divided among heirs by commissioners appointed by the Probate Court, if any piece of the property is of greater value than either party's share, and cannot be divided without great inconvenience, it may be set off to one or more of the parties, he or they paying to any one or more of the others such sums as the commissioners may award to make the partition equal. But in doing this, males are to be preferred to females, and among children of the deceased, the elder to the younger. Pub. Stats., ch. 178, §§ 56, 57.

There is no just reason for this distinction between the

sexes. The rights of the male and the female in the property are equal, and the only fair distinction is that of seniority. It is idle to say a son can take better care of a house or a mill than his older sister. If she prefers to hold the house or the mill, and pays him his money, he would not be injured, but justice would be done.

So far, I have considered the law as it relates equally to both classes of women, the married and unmarried. I now come to the law relating to the married. No branch of the law is more interesting and important than that which affects the marriage relation. Marriage makes a striking change in the legal status of a woman.

A woman is prohibited from marrying her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, her nephew or her uncle. Pub. Stat., ch. 145, § 2.

We have made a noteworthy improvement on the English law in not prohibiting a woman from marrying her deceased sister's husband, or her deceased husband's brother, besides a number of other persons connected with the woman in the same way, merely by affinity and not consanguinity. It may be worth remarking that no change was made in the English law on the subject by the colony or province, so far as I can discover. Every magistrate and minister is prohibited from solemnizing a marriage where he has reasonable cause to suppose the male party to be under twenty-one years of age or the female under eighteen, except with the consent of the parent or guardian having the custody of the minor, if there be one in the state. Pub. Stat., ch. 145, § 6. Such marriages, however, are not void. But any marriage celebrated when either party is under the age of consent, which

is fourteen for males and twelve for females, becomes void if the parties separate during such nonage, and do not afterwards live together as husband and wife. Pub. Stat., ch. 145, § 8.

A marriage is necessarily void, if at the time it is contracted, either party have a spouse living. Pub. Stat., ch. 145, § 4.

When a marriage is contracted, both parties honestly believing that the spouse of one of them by a former marriage is dead, if the new marriage is declared void on account of the prior marriage, still the issue of the second marriage is legitimate in regard to the party capable of contracting the marriage. Pub. Stat., ch. 145, § 14.

Why should not the child be considered legitimate in regard to both parents, since both are innocent? A returning husband, in such a case, would prefer to have the child of his unfortunate wife called legitimate. The parents of the child, and the child even at an early age, would prefer it. Yet Massachusetts still keeps on her statute book this section, which stigmatises innocence as infamy.

When the validity of a marriage is denied or doubted, either party may bring a suit against the other, to settle the question, in the Supreme Court, which, by decree, may affirm or annul it. Pub. Stat., ch. 145, § 11.

Notice of intention of marriage must be filed with the clerk or register of the city or town in which each party dwells; but, if both parties reside out of the State, it must be filed in the city or town in which they propose to be married. Pub. Stat., ch. 145, § 16.

A minister of the gospel or a justice of the peace residing in the State is authorized to solemnize marriages in the place of his residence or that of either party. Pub. Stat., ch. 145, § 22.

But marriages of Quakers made in the manner used by their societies are legal. Pub. Stat., ch. 145, § 23.

No marriage solemnized before a person professing to be a justice or a minister, or in the Society of Friends, is void for the want of jurisdiction in such person or society or an omission of entering an intention of marriage, if the marriage be in other respects lawful and consummated with a full belief of either of the persons so married that they have been lawfully married. Pub. Stat., ch. 145, § 27.

A marriage solemnized by a consul or a diplomatic agent of the United States in a foreign country is valid. Pub. Stat., ch. 145, § 28.

One striking consequence of marriage is, that not only does the wife lose her maiden address of Miss and become Mrs., but she usually, if not necessarily, changes her family name for that of her husband. This in form subordinates her to her husband. In this connection, however, a woman enjoys one small legal advantage over a man. A man cannot in Massachusetts make a lawful change of his name except by a decree of the Probate Court. But a woman on her marriage can change her name without such decree. Pub. Stat., ch. 148, § 12.

The statute does not limit the extent of changing her name. But there can be no doubt that she may prefix to her husband's surname any part or the whole of her previous names, as was the practice before the statute regulating change of names was passed in 1851. Whether she may prefix to her husband's a new name she never held before, or may persevere in using her old name without adopting his, has been disputed. But, as it is well settled that by the common law any person can change one's name without the decree of a court, my opinion is that at the time of her marriage a woman may change her name to any extent, if she

adopts her husband's surname. Whether marriage stamps the husband's name on the wife without her consent or against her protest, as birth does the father's on an infant, it is not necessary to discuss here.

To show the present state of the law regarding married women, I am compelled to exhibit some of the provisions of the English common law. This is the fountain from which the law in almost all our States has sprung. This is what it was, with very little change, fifty years ago. The greater part of the States have by legislation made astonishing improvements on it since that period. The common law held a man and wife to be one person; not, to be sure, in any high spiritual sense, as the harmonious union of two souls, but as signifying that after marriage the husband was the one person for both, and the wife nothing. So entire was the absorption of the wife, that an old law-writer, referring to *Æsop's* fable, calls marriage *leonina societas*, a leonine partnership, of which the husband has all the profits and the wife none.

By marriage, all the wife's personal property, of every description, which belonged to her at the time of the marriage, and all which came to her afterwards by inheritance, bequest, gift, or otherwise, became absolutely vested in the husband, even her clothes and jewels.

It is true that the wife's choses in action, that is, rights of action, such as debts due to her, if they were not reduced to possession by him, would, if she survived him, still be hers.

He became also the owner of all her real estate, so far that he was entitled to the rents and profits of it, certainly during their joint lives; and, if he survived her, he retained the real estate during his life, in case they had had any child

born alive. This right of the husband in the wife's real estate after her death is called tenancy by the curtesy.

All the earnings of the wife, as long as the union lasted, belonged to the husband. She was absolutely incapable of making any contract. Every contract she made, either with her husband or a third person, was null and void. She was also incapable of making any gift directly to, or receiving any directly from, him.

Not that the law really disapproved of husbands making gifts to their wives, for settlements made by husbands for the benefit of their wives by the intervention of trustees were always favored.

Wives, too, with the aid of their husbands, could always convey real estate to third persons for the very purpose of having these persons convey the same to their husbands. These circuitous operations were always performed in Massachusetts with less friction than in England.

The wife's legal incapacity rendered it impossible for her to become executor, administrator, guardian or trustee, and if she held any such office while single, her marriage deprived her of it.

For the same reason she could make no will, not even of the legal interest she still retained in her real estate, she could bring no action in any court on any contract made with her before marriage, or for any injury to her person, her character or her property, without her husband's consent and joining in the suit.

A will made by her before marriage was revoked by the marriage. This seems not unreasonable as a general rule. But a man's will was not revoked by his subsequent marriage unless he had a child born after that event. In England the law has been equalized for both the spouses by

making marriage of any person a revocation of one's will previously made.

One other provision of the old law deserves notice. If a wife in her husband's presence committed less than the highest felony, she could not be punished for it, because she was supposed to have done the act under his compulsion. Nothing could show more completely the abject subjection to her master which the common law took for granted.

The wife, on her husband's death, became absolutely entitled to her dower, which he could not deprive her of by will. Dower is the right which the wife, on her husband's death, has during her life to one third of all the real estate which he owned in fee during the marriage.

If the husband died intestate, the wife became entitled to one third of his personal property remaining after payment of his debts. But he might by will deprive her of every part of this property, even what had been hers before marriage, except her paraphernalia, that is, her clothing and personal ornaments.

The husband had the sole right to the custody of the minor children. He had also the control and custody of his wife's person, though bound to exercise this power in a reasonable manner. This was fully recognized even in this century, in England, in a case where the wife had been confined by her husband at his lodgings. By a *habeas corpus* she was brought before the Court of King's Bench, which remanded her to her husband's custody, on the ground that this was a reasonable exercise of his authority, if he thought she would make an improper use of her liberty. Thus the husband was made the judge, jury and jailor of his wife. He settled the law, tried the facts, and executed the sentence himself. The same principle has been fully recognized in England at a more recent period. I ought to add that I do not believe

any court in Massachusetts, during the last fifty years, would have adopted the extreme doctrine of this decision.

Neither husband nor wife could be witnesses for or against each other in any court.

The common law, however, did not absolutely forget the wife; for it made the husband liable for her debts contracted before marriage, and required him to maintain her in a manner suitable to his station and ability.

So he was liable to respond in damages for all actionable wrongs committed by her during the marriage, and was a necessary defendant in all suits against her.

Among the wealthy, the severity of the common law in England, and to a great extent in this country, has long been mitigated by marriage-settlements, which enable wives, independently of their husbands, through the intervention of trustees, to have the absolute control of the income, and sometimes even of the capital, of their property. We all know, too, that the great majority of English and American wives have long been placed incomparably higher in the social scale than their legal condition would indicate. But when a selfish and brutal husband, either in the higher or lower ranks, chose to exercise the tyrannical power vested in him by the law, the condition of the wife was worse, if possible, than that of a slave on a Southern plantation. He could steal her children, rob her of her earnings, and neglect to give her that maintenance which the law requires of him. Practically she had, except in very rare cases, no sufficient redress for these wrongs.

The improvement in the law regulating the matrimonial relation has been so marked and rapid in most of our States that it affords a glorious augury for the future in all that relates to woman's legal condition. In Massachusetts, the progress made is very gratifying, as is apparent from the

following summary of the present law affecting married women when it is compared with the older law. The first act which endowed wives with the power of holding property was passed in 1845. It empowered women, by an antenuptial contract, to hold any real or personal property enumerated in it. This law was useful in rendering settlements with trustees unnecessary for the legal protection of a wife's property. Though still in force, it has been to a great extent superseded in practice by later and, for most parties, more beneficial legislation. It may, however, still be used when it is desired to keep the property of one spouse in case of death from the legal claims of the other. Pub. Stat., ch. 147, §§ 26, 27.

The same statute of 1845 gave a general power to any person to devise, bequeath, or convey any property to a wife to her sole and separate use, free from the control of her husband. The statute gave the wife, in regard to such property, the same rights and powers to sue in her own name, made her liable to be sued at law or in equity on any contract made by her, or any wrong done by her, in respect to such property, to the same extent as if sole. It also rendered her liable to be sued on any contract made by her, or any wrong done, before marriage. The rights given by this act were embarrassed by its being made necessary to have every conveyance made her recorded within ninety days. Still the act is remarkable as being the first attempt in Massachusetts to give wives the same powers of holding and dealing with property as if they were single.

In order to give the present state of our law with accuracy, I shall, to a great extent, adopt the words of the Public Statutes which were passed in 1881 and went into operation February 1, 1882.

It 1855 the great act was passed which attacked, and to

a great extent overthrew, the marital rights of husband, and endowed the wife with important powers up to that time unknown.

The Public Statutes say : "The real and personal property of a woman shall upon her marriage remain her separate property, and a married woman may receive, receipt for, hold, manage and dispose of property, real and personal, in the same manner as if she were sole, except that she shall not without the written consent of her husband destroy or impair his tenancy by the curtesy in her real estate." Pub. Stat., ch. 147, § 1.

I confess I prefer the language of the General Statutes, which is as follows, omitting some unnecessary words : "The property, real and personal, which any married woman now owns as her separate property ; that which comes to her by descent, devise, bequest, gift or grant ; that which she acquires by her trade, business, labor or services, carried on or performed on her separate account, or received by her for releasing her dower by a deed executed subsequently to a conveyance of the estate of her husband ; that which a woman married in this State owns at the time of her marriage, and the rents, issues, profits and proceeds of all such property — are, notwithstanding her marriage, her separate property, and may be used, collected and invested by her in her own name, and are not subject to the control of her husband, or liable for his debts."

The poet tells us that striving to be brief he becomes obscure. So I cannot help fearing that the compilers, aiming at brevity, may have let slip some protection to women. I admire the very redundancy of the earlier act, which gives blow after blow, to make certain that the old enemy, the common law, is so beaten out of the territory conquered by the new law that it can never claim any part of it again.

Is it certain that if "a wife *may* receive and hold property in the same manner as if she were sole," there is no conceivable way in which property *may* come to her in which the common law claim of the husband cannot be interposed? I trust my fears may prove illusive. But every syllable of the great charter emancipating wives ought to have been held sacred.

In the last edition of this tract I traced historically the successive enactments for the benefit of married women. I shall in the present edition generally content myself with giving the final result in the Public Statutes, and in an appendix a list of the statutes for the benefit of women.

Though the act of 1855 gave the wife some powers of conveying property without her husband's consent, and some right of making contracts in relation to her own property, it was not till an act passed in 1874 that she had the full power of conveyance, and the full right of making contracts, as follows:—

"A married woman may make contracts, oral and written, sealed and unsealed, in the same manner as if she were sole, except that she shall not be authorized hereby to make contracts with her husband." Pub. Stat., ch. 147, § 2.

This exception, thus preserving the old common law, is not creditable to Massachusetts. Some of our sister states, in giving a general capacity of action to wives, have not hesitated to extend it to dealings with their husbands.

The amount of injury to wives, by thus refusing to sanction contracts with their husbands, is incalculable. The volumes of our law reports contain numerous cases which illustrate this. Wives often lend money to their husbands, for which the latter give notes. Husbands seldom deny the justice of these debts, though they frequently remain unpaid at their deaths. Then executors and administrators are

compelled by the court to refuse to pay these most righteous debts, and heirs are too often willing to reap the benefit of this legal wrong. Many thousand dollars every year are in this way lost by wives and widows in Massachusetts. Yet the legislature, though every year petitioned, refuses to give them any redress.

The arguments in favor of rendering contracts between husband and wife void are, first and principally, that it always has been so for ages. This requires no answer beyond this: the reason why she could make no binding contract with her husband or any other person under the old law was that all her property was her husband's. But now her property has ceased to be his and has become her own. The whole reason of the rule of law having ceased, the rule itself ought to cease with it in regard to the husband, as it has in regard to all other persons.

The other argument seems to be that there would be great danger to the husband's creditors in case of his becoming insolvent, of their suffering from his fraudulent dealings with his wife. The only answer necessary here is, that no contract which is essentially honest ought to be prohibited by law because one apparently fair may sometimes prove fraudulent.

Although the Supreme Court of Massachusetts declares all contracts between husband and wife to be void, yet the United States District Court has allowed a wife to prove a loan made by her to her husband as a debt against his estate. It is also clear that when she wishes to lend money to her husband, if she passes the money to B to act for her, and he lends the money accordingly to her husband, A, receiving A's note, promising to pay the money to B, in trust for her, the note is valid, and may be enforced against A by B as her trustee.

Another illustration of the evils of this system is in refusing to allow partnerships between husbands and wives. How difficult it is to eradicate all the roots of a great tree after the trunk is cut down. Business partnerships between husband and wife are often natural and convenient. How much better, too, would it be, when a married couple desire to carry on business together, to allow them to be partners than to compel one to be the master or mistress and the other the servant.

The Public Statutes, as amended by Stat. 1884, ch. 132, § 1, say: "Nothing contained in the preceding sections, Pub. Stat., ch. 147, §§ 1 and 2, just cited, shall authorize a husband or a wife to transfer property one to the other, except that a wife may by gift from her husband acquire as her personal property wearing apparel, articles of personal ornament, and articles necessary for her personal use, to a value of not more than two thousand dollars." Pub. Stat., ch. 147, § 3. Here the legislature is again interfering to prevent husband and wife from performing acts which are not in their nature wrong, but are often commendable. Such acts ought not to be prohibited, as I have before said, because they may sometimes be fraudulent. To interfere thus with the amenities of domestic life, to make it illegal for a wife to make a present to her husband, or to regulate the nature and extent of his gifts to her, is impertinent, unjust and cruel. What shows the monstrosity of this system is that the act of a husband conveying property to his wife is not objected to at all, for one spouse can convey property to the other to any extent, indirectly, by first conveying it to a third person, who then conveys it to the other.

Post nuptial settlements, by which a solvent husband gave property to trustees for his wife, were always favored. Since the wife's capacity to hold property has been enlarged, deeds

from husbands of real estate to a third person, and from the latter to the wife, have been quite common. Even a deed from a husband to a third person and his heirs, to the use of his wife and her heirs, passed the property to her. The whole system, however, is objectionable which prevents husbands and wives dealing with each other as freely and directly as with other persons.

All work and labor performed by a married woman for a person other than her husband and children, unless there is an express agreement on her part to the contrary, is presumed to be performed on her separate account. Pub. Stat., ch. 147, § 4.

By the common law, if an unmarried woman who is an executrix, administratrix, or guardian, marry, her powers in that capacity devolve on her husband. In Massachusetts, until 1869, the condition of married women was rendered by statute worse in this respect than the common law left it; for, in such case, not only did her functions cease, but they did not devolve on her husband, and a new person had to be appointed in her place. By the English law, too, a married woman could, with her husband's consent, accept the office of executrix or administratrix. He, however, would act for her. The law as administered in Massachusetts was more unfavorable for married women. Here a wife who was appointed executrix or trustee by will was not allowed to act as such, nor could she be an administratrix or guardian under any circumstances.

But a statute passed in 1869 allowed a married woman to be an executrix, administratrix, guardian or trustee, interposing, however, the unjust and foolish provision that the written consent of her husband, if of sound mind, must be filed in the Probate Court before she could be appointed. This provision was repealed by the act of 1874, which re-

enacted the enabling part of the act of 1869. After a woman is once appointed to any one of these offices, her subsequent marriage does not deprive her of it; and when once appointed, she holds it entirely independent of her husband.

The words of the Public Statutes follow.

A married woman may be an executrix, administratrix, guardian or trustee, and may bind herself and the estate she represents without any act or assent of her husband. Pub. Stat., ch. 147, § 5.

When the first edition of this tract appeared, if the children of a widow were under the guardianship of another person, as long as she remained unmarried she was entitled to the custody of their persons and the care of their education; but, if she married again, the statute deprived her of this natural right. As this atrocious enactment must seem incredible to mothers, I copy its very words:

"The guardian of a minor shall have the custody and tuition of his ward, and the care and management of all his estate. But the father of the minor, if living, and, in case of his death, the mother *while she remains unmarried*, they being respectively competent to transact their own business, shall be entitled to the custody of the person of the minor, and the care of his education."

This cruel provision no longer exists. For, by an act passed in 1870, the words "while she remains unmarried" were struck from the statute. Pub. Stat., ch. 139, § 4.

The inequality of legal rights in the two spouses is here still conspicuous. The mother has no legal share in the custody and care of her minor children while their father is living, unless she is living separate from him by divorce or otherwise, as explained elsewhere. Nature cries out against

this legal arrangement which places one parent below the other.

"A married woman may make a will in the same manner and with the same effect as if she were sole, except that such will does not, without the husband's written consent, operate to deprive him of his tenancy by the curtesy in her real estate or of more than one half of her personal estate." Pub. Stat., ch. 147, § 6.

The only objection to this provision is allowing the husband to hold for life all the deceased wife's real estate, while a widow has as her dower, where her husband leaves issue living, only one third of his real estate for her life. This inequality is most unjust, for the widow far more frequently than the widower needs assistance from the estate of a deceased spouse.

The great injustice to the wife's children of this tenancy by the curtesy does not always strike the imagination. But if we consider that the children left by the wife are sometimes not her husband's, but the offspring of a previous marriage, that when the husband is not more than forty years old the value of their reversion in the real estate is comparatively small, and even if he be much older is still very unsalable, we see that the operation of the system must be very harsh in many cases.

An act passed in 1884 amends the section last quoted by adding the words, "A married woman deserted by or living apart from her husband for a justifiable cause, when the proper court having jurisdiction of the parties and the cause of action shall have entered a decree establishing the fact of such desertion by, or living apart from, her husband for justifiable cause, may make a will in the same manner and with the same effect as if she were sole, and may by said will or under such circumstances by deed, without her husband's

written consent, dispose of all her real and personal estate." This provision cannot fail of being useful to wives who are unwilling to seek a divorce.

"A married woman may sue and be sued in the same manner as if she were sole, but this section shall not be construed to authorize suits between husband and wife." Pub. Stat., ch. 147, § 7.

This provision shows a very narrow adherence to the old law. To say that a woman shall never bring a suit against her husband is just as improper an interference with personal rights as it would be to prohibit suits between parents and children, or brothers and sisters. Public exhibitions of family quarrels are to be regretted. They are, however, not the causes of quarrels or ill-feeling, but usually the result of injustice on one side or the other. It is, however, well worth remarking that the statute does not absolutely prohibit suits in which husband and wife may be on opposite sides, but they are left to the old law. It would be a great and needless labor to enumerate such cases here, which are mostly suits in equity.

A wife is not liable for her husband's debts, nor is her property liable to be taken on an execution against him except as stated on page 34. Pub. Stat., ch. 147, § 8.

A husband is not liable to be sued on a cause of action originating against his wife before marriage, nor to pay any judgment recovered against her except as stated on page 34. Pub. Stat., ch. 147, § 9.

A wife's contracts in respect to her separate property, business or services, are not, except as stated in the next paragraph, binding on her husband or his property, but she and her separate property are liable as if she were sole. Pub. Stat., ch. 147, § 10.

When a wife does or proposes to do business on her sepa-

rate account, she must record in the clerk's office of the city or town where the business is to be done a certificate stating her own and her husband's name, and the place where the business is to be carried on, and if practicable the street and number on the street. When the nature of the business or its place is changed, a new certificate must be recorded. If a wife fail to record any certificate, her husband may record it. But if any one required be not recorded by either, the property employed in the business may be attached as the husband's, and taken on execution against him, and he becomes liable on all contracts lawfully made in conducting the business, as if he had made them himself. Pub. Stat., ch. 147, § 11. 'It is right that when a wife carries on a separate business she should be required to give some reasonable notice that the business is hers and not her husband's, so that his creditors may not be misled. But the statutory mode of giving notice of the wife's business is troublesome and not the most effectual, and the penalties for neglect are too severe. Would not requiring the woman's christian name at length, or the letters *Mrs.* prefixed before her surname, with the word *Trader* to be set at the entrance of her place of business, be a more sure notice than anything in the clerk's office? To make the husband liable on contracts made in her name and on her account is unreasonable and unjust.

The Supreme Court, on a wife's petition, may appoint a trustee to hold such separate property as she may convey him on such trusts as she may declare in the conveyance. Pub. Stat., ch. 147, § 13.

This provision now seems superfluous, as the intervention of the court is quite unnecessary to enable a wife to convey her property in trust.

The provision of the following paragraph in regard to personal property affects principally, if not solely, women mar-

ried before July 3, 1856. If the sale of her real estate, under the authority of the court, takes away the husband's tenancy by the curtesy, it still affects other wives.

A wife abandoned by her husband, who has left the State and does not sufficiently maintain her, or has been sentenced to confinement in the state prison, may be authorized by the Supreme Court to sell and receipt for her real and personal property, and any personal estate which may have come to her husband, and any which he is entitled to by reason of the marriage, and to use the property and its proceeds as if unmarried during his absence or imprisonment. Pub. Stat., ch. 147, § 31.

A wife whom her husband, without just cause, fails to support or deserts, or who is for any justifiable cause living separate from him, may, on her own petition, or, if she be insane, on that of her guardian or next friend, obtain an order from the Probate Court to prohibit her husband from imposing any restraint on her personal liberty; and may, on the application of either husband or wife, make such further order as the court thinks expedient concerning her support, and the care, custody and maintenance of the minor children of the parties, and subsequently may revise and alter the order on the application of either party. Pub. Stat., ch. 147, § 33.

This last provision was, no doubt, made because some wives who have separated from their husbands, from conscientious scruples, do not seek a divorce; and sometimes a separation is allowable for reasons which would not justify a divorce.

It is very difficult in practice to enforce the obligation of a husband to support his wife and children where he has little or no visible property, and especially when he has nothing but his own labor to support himself. An act passed in

1885 provides that whoever unreasonably neglects to provide for the support of his wife or minor child may be punished by fine not exceeding twenty dollars or imprisonment not exceeding six months. The court can make the fine payable to the party actually supporting the wife and child.

A married woman coming into the State without her husband has all the rights and powers given by the statute to married women, and may transact business, make contracts, sue, be sued, and dispose of her property here as if unmarried. Pub. Stat., ch. 147, § 29.

When a couple who were married out of the State reside in it, the wife retains all property acquired by her under the laws of any other state or country; and their residing together here has the same effect with regard to their subsequent rights and liabilities as if they had married at the time of their first residing here together. Pub. Stat., ch. 147, § 30.

I have not space to discuss the principles which should regulate the law of divorce. It is certain, however, that the tendency in Massachusetts, as in most of the other states, has for a long period been to render the judicial sundering of the marriage bond more easy. It is not many years since when the causes of absolute divorce were few, separation of husband and wife for other causes sometimes called divorces *a mensa et thoro*, from bed and board, leaving the marriage bond untouched, were allowed. This nominal divorce operated here, as it has wherever tolerated, to promote licentiousness. It was wisely abolished by the legislature in 1870, and former causes of legal separation were made grounds of total divorce.

The causes of divorce now are, against either party, adultery, impotency, extreme cruelty, utter desertion for

three successive years, gross and confirmed habits of intoxication, cruel and abusive treatment, the separating from one's spouse and uniting and continuing for three years with a religious society which regards the relation of husband and wife unlawful; a sentence to hard labor for life, or for not less than five years in the state prison or jail; and by the wife against the husband when he, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her. Pub. Stat., ch. 146, §§ 1 and 2.

Though the law in regard to divorce is entirely equal in terms for both parties in regard to all the causes except the last, yet it becomes a remedy for women in far more cases than for men. Is it the wife or the husband who is the more frequently unfaithful? Which party is more frequently guilty of extreme cruelty to or desertion of the other? Which party more often becomes a confirmed drunkard? or is guilty of cruel and abusive treatment? or is sent to the state prison? It is not necessary to go to the court records to answer these questions. The smallest observation of society gives the response.

Yet the records are so remarkable that it is well to present the figures given by them. The Registration Report of Massachusetts, published in 1885, gives the number of divorces obtained by wives and husbands, respectively, in the state for the twenty years beginning with 1865 and ending with 1884, for the causes named, as follows:

	Adultery.	Desertion.	Habitual Drunkenness.	Extreme Cruelty.	Cruel and Abusive Treatment.	Neglect to Provide.	Imprisonment.	Total.
Wives against husbands.	1780	2612	771	499	490	202	64	6417.
Husbands against wives.	1463	1423	87		1		3	2985

It thus appears that in twenty years considerably more than twice as many divorces were granted wives than husbands; and the new causes of divorce created by statute in 1870 proved almost exclusively for the benefit of wives. In 1883, 461 wives obtained divorces and 194 husbands. The proportions remain nearly the same, though the number obtained by wives is slightly larger in proportion than that obtained by husbands.

It is also worth while to remark that the desertions of husbands are often accompanied by adultery, when the judgments against them are only for desertion.

It is, however, quite probable that the wife joins the Shakers more frequently than the husband. But an express provision for such an emergency is now quite superfluous, since the case is covered by the general provision in regard to desertion.

Some persons are no doubt still suffering under divorces from bed and board, or divorces *nisi*, that is, uncomplete divorces, which might have been made effectual long ago. Any of such parties, innocent or guilty, can now get a full divorce by petitioning the Supreme Court. Pub. Stat., ch. 146, § 3.

A statute of 1884 allows a divorce, notwithstanding the libellee had been absent for such a length of time and under such circumstances as would raise a presumption of death. This is quite right, for a husband long supposed to be dead now and then reappears to disconcert his innocent wife and his unlucky successor.

In all suits for divorce the court may require the husband to pay into the court for the wife's use such sum of money as may enable her to maintain or defend the suit; and she shall, when it appears to be just and reasonable, be entitled

to alimony during the pendency of the suit. Pub. Stat., ch. 146, § 15.

During the pendency of a libel for divorce, the court may make any order concerning the care and custody of the minor children of the parties that may be expedient and for the children's benefit. Pub. Stat., ch. 146, § 17.

An act passed in 1881, since incorporated in the Public Statutes, authorizes the court before which a libel for divorce is pending, without entering a decree of divorce (it is implied that the libellant is entitled to such a decree), to continue the case from time to time (indefinitely) and during such continuance to make such orders "concerning the temporary separation of the parties, the separate maintenance of the wife, and the custody and support of minor children, as, in its judgment, the interests of the parties and the necessities of the case demand." Pub. Stat., ch. 146, § 18.

This is a most extraordinary provision, bringing back, in a surreptitious manner, the abomination of divorce from bed and board. What an arbitrary power is given to the court. Consider a single case. A lady brings a libel for divorce against her husband for cruelty or desertion. She has a trial, and the facts are established to the satisfaction of the court, and the court gives her the custody of the children, and orders the husband to pay her money for her and their maintenance. The statute entitles her to a divorce, but the judge, thinking himself wiser than the general law, denies it, and makes the husband and wife live apart. She may die, leaving real and personal property. Half her personal property, and a life estate in her real, go to her husband, while her children are left to his mercy. I do not mean to charge that any one of our judges would be so unwise as to exercise the power given to him by this section, but I contend that no such power ought to be given to any judge.

The illustration which I have introduced shows the evil operation of divorce from bed and board. Sad as it is, it is only one aspect of a great wrong. As long as divorces from bed and board are the only remedy in any place for marital offences, the consequences are and must be that many of the half-separated parties cannot endure the condition. Some enter into new marriage relations, illegal of course, enduring the disgrace and branding the stigma of illegitimacy upon the children, fruits of such relations. Others, especially men, are drawn into licentious courses. It is not Massachusetts alone, but the United States, England, continental Europe, and all history, that warn us not to bring back in any shape a system which has always been mischievous and demoralizing wherever practiced.

After a divorce either party may marry again, except that the party against whom the divorce is granted cannot marry within two years from the time of the entry of the final decree of divorce. Pub. Stat., ch. 146, § 22.

When a divorce is granted to a wife the court may allow her to resume her maiden name or that of a former husband. Pub. Stat., ch. 146, § 21.

In case of a divorce for any cause except the wife's adultery, the wife becomes entitled to the immediate possession of her real estate; and the court may also make a decree restoring to the wife the whole or any part of the personal estate which came to the husband by reason of the marriage, or the value thereof in money. And the court, if it please, may order the same to be delivered to a trustee, for the support and benefit of the wife and minor children of the marriage. Pub. Stat., ch. 146, §§ 24, 25.

The provisions in the last paragraph, adopted from an old statute, seem now only to affect persons married before the law of 1855 came into force. Wives married since that time,

as already stated, own their property, both real and personal, after marriage as they did before.

Where a divorce is decreed for the husband's adultery or his sentence to confinement at hard labor, the wife becomes entitled to her dower as if he were dead. Pub. Stat., ch. 146, § 28.

On a divorce for the wife's adultery, her title to her separate real and personal property during her life is not affected, except that the court may decree to the husband so much of said estate as it may deem necessary for the support of their minor children who may have been decreed to his custody; and if she afterwards marry, his interest in her separate real and personal estate, except that thus decreed him, ceases. Pub. Stat., ch. 146, § 27.

This provision is based on a statute passed in 1877. It appears to me very unwise in attempting to provide any interest in the wife's property to her husband after her death. What shall be decreed the husband is properly left to the discretion of the court. But is it just to embarrass the title to the real estate of the poor erring sister by disabling her from selling or mortgaging it without asking, and, perhaps, buying the consent of a person who has now become a stranger? It may well be doubted whether the statute has accomplished what it seems to have intended. When the divorce severs the marriage bond, the parties to it cease to be husband and wife, and the only claim he has on her property is that given by the decree. During her life, without the provision just cited, he would have no claim on her real and personal estate. After her death, without this provision, he would have no such claim, because he is not her husband at the time of her death. Does the statute's saying that his interest in her estate shall cease on her marrying give him an interest after her death, if he had none before?

The law makers may have imagined he had such an interest, but they certainly have used no words to give it to him.

At the time a divorce is decreed, or afterwards, the court may decree alimony to the wife, or a part of her estate in the nature of alimony to the husband. Pub. Stat., ch. 146, § 36.

On granting a divorce, the court may make such decree as it deems expedient concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain, and may afterwards modify the decree on the petition of either parent. Pub. Stat., ch. 146, § 29.

After a divorce granted in another state, if the minor children of the marriage are inhabitants of this State, the Supreme Court may make like decrees concerning their care, custody, education and maintenance. Pub. Stat., ch. 146, § 30.

When the infant children of divorced parents are natives of the State, or have resided in it five years, they shall not be removed out of it without their own consent, if of suitable age to give it: or, if under that age, without the consent of both parents, unless the Supreme Court orders otherwise. Pub. Stat., ch. 146, § 31.

"In making an order or decree relative to the custody of children pending a controversy between their parents, or in regard to their final possession, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody or possession." Pub. Stat., ch. 146, § 32.

Where the parents of minor children live separately, the Supreme Court has the same power to make decrees "concerning their care, custody, education and maintenance" as

if the parents were divorced, and is governed by the same rules. Pub. Stat., ch. 147, § 36.

The equal rights of parents to the care and custody of children is now established when the husband and wife are divorced or live apart without being divorced. But when the married pair are living together, ought not the mother to have an equal voice in the nurture and education of their offspring? In well regulated families, the influence of the mother is usually potent. There is no more necessity for giving the whole legal authority to one spouse than there is in common partnerships of giving a superior power to one partner over another.

Children under the age of fourteen years may be bound as apprentices or servants by their father, or, if he be dead or incompetent, by their mother, but the power of the mother ceases if she marry again. Children over fourteen may be bound in the same way, but their own consent is necessary. Females may be bound till they are eighteen or marry, and males till they are twenty-one. Pub. Stat., ch. 149, §§ 1, 2, 3.

Surely the mother's marriage ought not to annul her power over her children, though the subject is of less importance than it used to be when apprenticeships were more frequent. Ought not the law to give the mother the same relation to her offspring that nature has bestowed? Why, indeed, should the earnings of minor children belong wholly to their fathers? Are they not as much indebted to their mothers?

Early editions of this tract contained a long statement of how much it was necessary to do to remove the legal incapacity of married women. So much has been since done in this direction that I gladly omit the sentences referred to.

Still the unequal condition of the wife remains in many

respects. It is, indeed, strikingly apparent in the case of the death of either husband or wife.

When a wife owning real estate in fee dies before her husband and they have had a living child, the husband takes the estate for his life, as tenant by the curtesy. This right of the husband is superior to the claims of his wife's creditors. Pub. Stat., ch. 134, § 2. If they have had no such child, he holds one half of such estate for his life. If she die intestate, leaving no issue living, he takes her real estate in fee to the value of \$5000, with a life interest as before provided in her other real estate. If she die intestate leaving no kindred, he takes the whole of her real estate in fee. Pub. Stat., ch. 124, § 1, as amended by statute 1885, ch. 253.

By the common law, the husband whose wife had never given him a living child, had no interest in her real estate after her death. But an act passed in 1877 gave him a life interest in one half of her real estate, if she did not by will provide otherwise. The act of 1885 just cited has taken away from her this power, and his right to a life interest in half her real estate becomes absolute. It is a great objection to this act that, instead of placing the husband and wife on an equal footing, which has been the tendency of much of our recent legislation, it takes a backward step by annulling an existing power of the wife, and on her death gives her childless husband the use of half of her real property for his life, while she on his decease has only a life interest in one third of his.

The husband also takes the whole of her personal estate, if she leaves no issue and no will. But if she leaves issue, he takes but one-half, and even if they have no issue she may deprive him of one half by will. Stat. 1882, ch. 141. Pub. Stat., ch. 135, § 3; ch. 147, § 6.

Now look at the other side. When the husband dies, the

wife is entitled in all cases to her dower at common law, that is to one third of all the real estate which he owned in fee, during her life, with the exceptions hereinafter noted. This dower right the husband cannot deprive her of by a sale of land in which she does not join, nor can it be levied on by his creditors nor sold to pay his debts after his death. Pub. Stat., ch. 172, § 59; Pub. Stat., ch. 134, § 2. The monstrous inequality and injustice of giving a husband a life interest in the whole of his deceased wife's lands, and giving her the same interest in only one third of those of her deceased partner, needs no comment.

A widow has no right of dower in wild lands, except wood lots or other lots used with the farm or dwelling-house. Pub. Stat., ch. 124, § 4. This is a harsh provision, since wild lands sometimes become valuable during the widowhood and especially considering that the husband's tenancy by the curtesy is subject to no such limitation.

When a husband dies intestate, leaving no issue, his wife takes his real estate in fee to the amount of \$5000 and one half his other real estate during her life, or if she files her election in the probate office within six months after administration taken, she may have, instead of such life estate, her dower in his real estate other than that taken in fee. If the husband dies intestate, leaving no kindred, she takes the whole of his real estate in fee. Pub. Stat., ch. 124, § 3.

The provisions in the last paragraph are well intended, but will they in fact in all cases give widows all the benefits aimed at? The real estate to the amount of \$5000, given by the statute, is liable to be taken for the husband's debts. In many cases her dower would be far better, but the statute seems to give her no option, as it ought to do, except in regard to real estate beyond the \$5000. This is a great

inadvertence in the act of 1880, on which the provision in question is based.

Though a woman can take no dower in wild land, yet she may take it as part of her life estate under the provision of the Public Statutes last referred to, and may use, clear and improve it. Pub. Stat., ch. 124, § 4.

A woman may be barred of her dower by a jointure settled on her before marriage with her assent, such jointure to consist of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit on the husband's death. Pub. Stat., ch. 24, § 7.

Any pecuniary provision made with the like assent of the intended wife also bars her dower. Pub. Stat., ch. 124, § 8.

If the jointure or pecuniary provision is made before marriage, without her assent, or if it be made after marriage, it shall bar her dower, unless within six months after her husband's death she makes her election to waive such provision and take her dower. If the husband dies while absent from the wife, she has six months after notice of his death in which to make her election; and in all cases has six months for that purpose, after notice of the existence of such jointure or provision. Pub. Stat., ch. 124, § 9.

Every householder having a family may acquire a homestead estate not exceeding in value \$800 in land and buildings, owned or leased to him and occupied by him as a residence, which will not be liable to be taken for the payment of his debts. Such a homestead may be created by a declaration in the deed conveying the property to the purchaser that it is designed to be held as a homestead, or by a writing afterwards executed by him and recorded. This homestead right continues after the householder's death for the benefit of his wife and minor children, and is enjoyed by them if some one of them occupies the premises until the youngest child

becomes twenty-one years old and until the marriage or death of the widow. Pub. Stat., ch. 123.

It seems that a woman is capable of gaining a homestead right in an estate purchased by her, though it is not often that she does it.

In regard to personal estate, whether the husband when he dies leaves a will or not, his widow is always entitled to such an allowance from his estate as the Probate Court, having regard to all the circumstances of the case, may allow as necessities for herself and the family under her care, besides the use of his house and furniture, and sufficient provisions and other articles for the reasonable sustenance of his family for forty days. Pub. Stat., ch. 135, § 2.

This provision for widows, where the estate of the deceased is small or insolvent, as is generally the case, is often very important, as it is superior to all claims of heirs and creditors.

A widow may remain in her husband's house forty days after his death without rent. Pub. Stat., ch. 124, § 3.

When a man dies intestate, after payment of the above allowance, his debts and charge of administration, if he leaves a widow and issue, she is entitled to one third of the residue of his personal estate. Pub. Stat., ch. 135, § 3. And if he leave a widow and no issue, she is entitled to the whole of the residue to the amount of \$5000, and one half the excess of the residue above \$10,000. Pub. Stat., ch. 135, § 3, cl. 5. If he leave a widow and no kindred, she is entitled to the whole of the residue. Stat. 1885, ch. 276. This, however, is not a new provision. It was law when the Public Statutes were prepared, but inadvertently omitted.

A widow may, within six months after the probate of her husband's will, file in the registry of probate a waiver of the provision made for her by his will, or a claim to what she

would have of his estate real and personal had he died intestate, and she shall then be entitled to the same portion of his estate as if she had died intestate, except that if the personal estate to which she would be entitled exceeds \$10,000, she shall only be entitled to the income during her life of all her share over that amount. Pub. Stat., ch. 127, § 18. When, after probate of the will, its validity or effect is questioned by legal proceedings, the probate court may, within the six months, extend the time of filing such waiver for six months after the ending of such proceedings. Pub. Stat., ch. 127, § 18.

The provision for compelling a widow to make her choice within six months between the provisions made her by the will and her legal rights, appears to me harsh and oppressive. It may easily happen that within that period it is impossible for a widow to decide which is for her interest. After that time the husband's estate may turn out to be insolvent, or may prove unexpectedly large. Why should she be driven to make a hasty decision in a matter so important to her? No widower is driven to such a choice.

The provisions just stated are much in advance of the old law, which allowed the husband to will all his personal property away, without leaving anything to his widow, even if all had belonged to her before marriage. The inequality between the husband and wife, however, is still manifest. Why should they not be equal? The wife usually needs the husband's property more than he needs hers.

If a man or woman, at the time of marriage, has a large property which it is desired to take out of the general law, it can be done by a marriage-settlement, but where there is no settlement the survivor of the husband and wife, in case of the death of either, ought to have equal claims on the property of the deceased.

The inequality in the condition of the two spouses on the death of one of them is very strikingly shown in this. A husband is always entitled to administration on his wife's estate, when she dies intestate; but the Probate Court, when the husband dies intestate, may grant administration on his estate to his widow or his next of kin or to her and the next of kin jointly. Pub. Stat., ch. 130, § 1. The right of administration is generally important and sometimes very valuable.

Until within a few years, if a son or a daughter of full age died intestate, leaving no issue, the father inherited all the property of the deceased, to the exclusion of the mother, sisters and brothers. In case, however, of the father being dead, the property was divided equally between the mother and the surviving brothers and sisters.

I gladly omit the censure I formerly made on this disgraceful state of the law, for the wrong was corrected by an act passed in 1876, which provided that when a person died leaving no issue his estate, real and personal, should descend in equal shares to his father and mother; but leaving no issue or mother, to his father, and leaving no issue or father, then to his mother. Pub. Stat., ch. 125, § 1; ch. 135, § 3.

By an act passed in 1883 a widow was given a right of interment in her husband's lot in a cemetery. By an act passed in 1885 all descents and devises of every lot in any cemetery are subject to the following limitations: If the proprietor leaves a widow and children, they shall have in common; and if he leaves a widow and no children, she shall have the possession, care and control of the lot during her life. The parties having such possession may erect a monument and make other permanent improvements thereon. The widow has a right of interment for her body in the lot, or in a tomb on the lot, and no proprietor has the right to

remove it; but the body may be removed to some other family lot or tomb with the consent of her heirs.

A father has the right to appoint guardians to his children by his will, and if he does not exercise this power, the mother may, after his death, appoint guardians to her children by her will. Pub. Stat., ch. 139, § 5. It was not till 1877 that even this qualified right of appointing a testamentary guardian to her children was granted to the mother. It is hard to be obliged to accept such a crumb of justice doled out with such a careless hand. It is true that a testamentary guardian appointed by the father cannot deprive the mother of the custody and care of the children, nor could one appointed by her deprive the father of his natural right. Why, then, should she not have the same right that he has of appointing a testamentary guardian at any time? His rights over the children are not impaired by giving her such a privilege.

Suppose the guardian of the father dies or refuses to act, ought the mother to be deprived of the right of protecting her children by will?

Again, in case a woman has obtained a divorce from her husband on account of his criminal conduct, and the care of the children has been given her by the court, it seems specially hard that she should not have the power of appointing a guardian to her children by will, who, even if her death devolved the custody of the children on her husband, would still have the care of their property. To produce an entire equality on this subject between the spouses, it ought to be the will of the survivor which should endow the testamentary guardian with the custody of the children and care of their education.

Under the common law, neither husband nor wife could be a witness in any case in which the other was a party.

As the law now stands, husband and wife can be witnesses for and against each other in all legal proceedings, but neither of them is allowed to testify to private conversations with each other, and neither can be compelled to be a witness in any trial of an indictment or other criminal proceeding against the other. Pub. Stat., ch. 169, § 18. It may be a question whether the court ought not to have the power to compel the disclosure of conversations relating to property and evidence in regard to crime.

The husband or wife, &c., of any person who has the habit of drinking intoxicating liquors to excess, — I will call him A, — may give a written notice to any person, — call him B, — not to deliver intoxicating liquor to A. If B, within a year after the notice, delivers such liquor to A, the person giving the notice may recover by action not less than \$100, nor more than \$500, against B; and, if a married woman gives the notice, she may bring the action in her own name, and all damages recovered go to her separate use. Pub. Stat., ch. 100, § 25.

By an act passed in 1879, the court before whom any person is convicted of an assault on his wife is authorized, in addition to the other penalties inflicted, or in lieu thereof to order such person to recognize with surety or sureties, to keep the peace for any term not exceeding two years. Pub. Stat., ch. 215, § 9.

The first five sections of Pub. Stat., ch. 203, give different amounts of punishment for malicious burning of houses, other buildings, and several kinds of personal property. The sixth section provides: "The preceding sections shall severally extend to a married woman who commits either of the offences therein described, though the property burned or set fire to belongs partly or wholly to her husband." There was, no doubt, some technical reason which led to this

queer provision, without any corresponding one for similar crimes of the husband against the wife's property. It was of course not to protect the husband, but originated in the fancy that the wife's incapacity was so great in regard to her husband's property that the power of committing crimes against him must be granted her by special legislation.

By the common law, a conveyance of real estate to husband and wife in fee rendered them joint tenants, so that on the death of either the whole property went to the survivor and the survivor's heirs. The legislature in 1885 passed an act by which, under such a conveyance, the spouses became tenants in common, each owning an undivided half of the property, which, on the death of each of them, passes to the heirs or devisees of the deceased.

The common law took a strange way to assert the husband's supremacy, by declaring a wife who murdered her husband to be guilty of petit treason, and subjecting her to a severer punishment than a common murderer. This distinction between the two crimes was abolished in this State by statute in 1785.

On looking at the law of Massachusetts in regard to husband and wife as it now exists, although there still remain very serious defects in it, some of them bearing unfairly on both sides, and although the just equality of the two spouses is not acknowledged in all respects, yet we must admit that within little more than forty years a great revolution in the law respecting this relation has been affected, and all of it favorable to wives, recognizing and enforcing their rights to their property, their persons and their children.

It is, however, often said of women, and more especially of those married, that they have gained all the rights they need, and have now no serious causes of complaint left. Without, however, disputing the important change made in the legal

standing of women in recent years, it is only necessary to recapitulate a few of the principal existing defects in the law in this respect to show how much more remains to be done to complete the work and render woman the legal equal of man.

Women have no right to the ballot in city, town or state affairs, except the comparatively unimportant power to vote for school committees.

Under the constitution and law as understood by our Supreme Court, there are many public offices which cannot be held by women, while their power to hold others is still doubtful under popular opinion.

Wives can make no contracts with their husbands.

Wives can legally receive no gifts directly from their husbands, except to a very limited extent, and can give none directly to their husbands.

On the death of a husband intestate, his widow can claim a much smaller share of his estate than he can of hers when she dies intestate.

The husband, while the two spouses are living together, has the exclusive right to regulate the care, maintenance, residence and education of their children.

The wife is entitled to no share of the earnings of her minor children while they are living with her and their father.

The husband is entitled to administration on the estate of his wife when she dies intestate, but when he dies intestate she is not absolutely entitled to administration on his estate, for the judge of probate can give it either to her alone, to her and one of the next of kin, or to the next of kin alone.

A husband can appoint a testamentary guardian for his children; a wife can appoint none for hers, though a widow can.

The last fifty years have done more to improve the law for married women than the four hundred preceding. It is evident that a public sentiment is at work, not only in Massachusetts but throughout the greater part of the United States, that must continue in operation until women have gained suffrage, and every other right and privilege to make them the legal equals of men.

The great difficulty to be overcome in effecting the complete emancipation of women is, not that most men are unwilling to do complete justice to the sex, or that the majority of women care nothing for this object; but it is simply a superstitious dread, lest a change so radical should unsettle all the foundations of society, and bring down the whole fabric in ruins. The history of the great legal reforms which have been accomplished in our generation shows how idle is this fear. We need never doubt the practical operation of a great reform in a community like ours, where it is based on a sound principle.

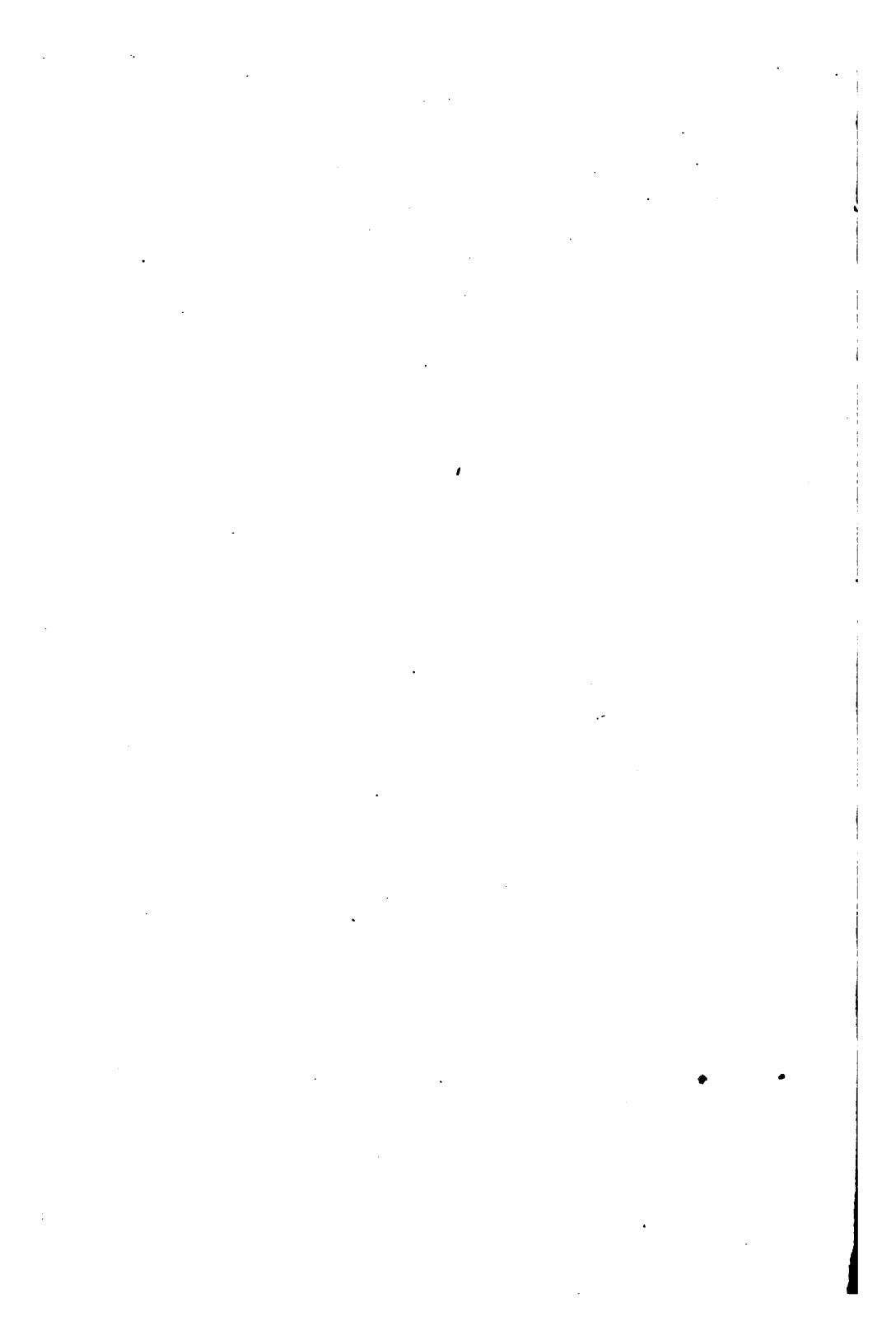
Two great rules of evidence pervaded the common law: the first that no person could be a witness in his own case; the second, that no person having a pecuniary interest in the result of a suit, be it ever so small, could be a witness for the party whose success would benefit him. The soundness and importance of these rules were acknowledged by bench and bar. They were, however, assailed with overwhelming logic by Bentham and his followers. The result we see. Within a few years, both rules have been very generally abrogated. Now a person can be a witness for himself; and any one interested in his favor can also be a witness for him in any civil suit; and a person charged with crime can testify in his own favor. Even husband and wife, as already stated, can testify for and against each other. Though it was pre-

dicted that great evils would flow from these changes, it is certain they have greatly promoted truth and justice.

So the great and fundamental changes already stated, which have recently been made in regard to the laws affecting married women, violently as they were resisted, are now, as admitted generally by their former opponents, producing an amount of good which it is difficult to overestimate, and no evil.

The next steps which are to relieve woman from all remains of feudal oppression and restore her to the equality with man with which nature endowed her, are far less difficult than the ones already taken.

When men and women are made equals in the eye of the law, and not before, shall we complete the foundations of a just commonwealth, which were laid by the Puritans, strengthened by the Declaration of Independence and consolidated by the abolition of slavery. Then we may hope, by the united action of both sexes, to regenerate the republic and make it an example for the world and future ages. The experiment of a republic based on equal rights can never be fairly tried while one half of the adult population remains an inferior caste, with no voice in the laws which are to govern them.



## APPENDIX.

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### LIST OF STATUTES SPECIALLY AFFECTING WOMEN PASSED SINCE 1841.

- 1842, ch. 74. Will of wife.
- “ ch. 83. Custody of children.
- 1843, ch. 77. Divorce.
- 1845, ch. 216, § 42. Punishment of abduction.
- “ ch. 208. Marriage contract: wife's separate property.
- 1846, ch. 197. Divorce.
- “ ch. 209. Wife's wages and deposits.
- 1849, ch. 87. Inheritance of widow.
- “ ch. 141. Divorce: wife's name.
- 1850, ch. 100. Divorce, &c.
- “ ch. 111. Dower.
- “ ch. 121. Marriage.
- “ ch. 200. Will of wife.
- 1851, ch. 82. Divorce.
- 1852, ch. 254. Abduction of maiden.
- 1853, ch. 23. Divorce, alimony, children.
- “ ch. 355. Taxation of widows and others.
- “ ch. 349. Divorce.
- 1854, ch. 406. Inheritance of widow.
- “ ch. 428. Waiver of husband's will.
- 1855, ch. 27. Divorce.
- “ ch. 56. Divorce: jury trial.
- “ ch. 65. Divorce.
- “ ch. 137. Divorce, children.
- “ ch. 237. Sale of insane wife's real estate.
- “ ch. 304. Wife's property, conveyances, contracts, will, &c.
- “ ch. 329. Marriage contracts.
- “ ch. 426. Divorce.
- “ ch. 458. Wife's support, husband insane.
- 1856, ch. 24. Parents and children.

- 1856, ch. 99. Wife's support, husband insane.
- “ ch. 169. Dower of insane wife.
- 1857, ch. 141, § 30. When woman is not arrestable.
- “ ch. 228. Divorce.
- “ ch. 249. Wife's property, conveyances, contracts, will, &c.
- “ ch. 255. Divorce.
- “ ch. 298. Homestead.
- 1858, ch. 33. Inheritance of widow.
- “ ch. 43. Widows and others relief from taxation.
- “ ch. 56. Dower.
- “ ch. 62. Homestead.
- 1861, ch. 164. Waiver of husband's will.
- 1862, ch. 90. Divorce.
- “ ch. 162. Collection of judgment debts of women.
- “ ch. 198. Wife's separate business.
- 1863, ch. 109. Divorce.
- “ ch. 165. Wife cannot be a partner.
- 1864, ch. 197. Life insurance for wife.
- “ ch. 198. Wife's trust estates.
- “ ch. 216. Divorce.
- “ ch. 276. Wife's will.
- 1866, ch. 148. Divorce.
- 1867, ch. 58. Marriage.
- “ ch. 222. Divorce.
- “ ch. 248. Marriage contracts.
- 1868, ch. 95. Wife's earnings.
- “ ch. 153. Advisory board of women.
- 1869, ch. 292. Marriage contracts.
- “ ch. 304. Wife's contracts.
- “ ch. 346. Women members of religious societies.
- “ ch. 409. Wife executrix, guardian, trustee.
- “ ch. 418. Dower.
- 1870, ch. 370, § 2. Classification of male and female prisoners.
- “ ch. 370, § 10. Women advisory board of prisons.
- “ ch. 393, § 1. Husband and wife witnesses.
- “ ch. 404. Divorce.
- 1871, ch. resolve 66. Concerning state prisons for women.
- “ ch. 116. Widow's custody of children.
- “ ch. 200. Waiver of husband's will.
- “ ch. 312. Action of tort by and against wives.
- 1873, ch. 58. Waiver of husband's will.
- “ ch. 371. Divorce, alimony, children.

- 1874, ch. 184. Wife's power to convey, contract, sue, be executrix, &c.
- “ ch. 205. Rights and remedies of wives deserted, &c.
- “ ch. 221. Women's hours of labor in factories.
- “ ch. 274, § 2. Settlement of women how gained.
- “ ch. 385. Reform prison for women.
- “ ch. 389. Women eligible to school committees.
- “ ch. 397. Divorces.
- 1875, ch. 50, § 16. Intoxicating liquors.
- “ ch. 226. Divorce.
- 1876, ch. 89. Dower.
- “ ch. 118. Male night-walkers.
- “ ch. 220, §§ 1 and 4. Heirship of mother.
- 1877, ch. 82. Husband's interest in lands of deceased wife.
- “ ch. 128. Guardian to children appointed by mother's will.
- “ ch. 174. Divorce.
- “ ch. 178, § 5. Divorce, alimony, &c.
- “ ch. 195. Women to be advisory board to inspectors of state almshouses, &c.
- 1878, ch. 25. Reformatory prison for women.
- “ ch. 67. Dower.
- “ ch. 199. Support of insane wife.
- “ ch. 206. Taxation of women.
- “ ch. 270. Reformatory prison for women.
- 1879, ch. 42. Husband's assault on wife.
- “ ch. 133. Husband's gifts to wife.
- “ ch. 223. Women may vote for school committee.
- “ ch. 291, § 8. Women trustees of state primary and reform schools.
- “ ch. 291, § 9. Women trustees of state almshouse.
- “ ch. 291, § 9. Women trustees of state workhouse.
- “ ch. 294, § 1. Women commissioners of prisons.
- “ ch. 294, § 22. Officers of reformatory prison.
- 1880, ch. 31. Attachment of husband's property by wife.
- “ ch. 114. Reformatory prison for women.
- “ ch. 64. Jurisdiction of Probate Court for wives.
- “ ch. 120. Reformatory prison for women.
- “ ch. 194. Women's hours of labor.
- “ ch. 211. Descent of real estate of husband and wife.
- 1881, ch. 33. Insane wife.
- “ ch. 43. Reformatory prison for women.
- “ ch. 64, §§ 1 and 3. Wife's separate business.

- 1881, ch. 90. Reformatory prison for women.
- “ ch. 112. Descent of real estate of husband and wife.
- “ ch. 179. Assisting discharged female convicts.
- “ ch. 194. Women voting for school committees.
- “ ch. 234. Divorce.
- 1882, ch. 139. Women may be attorneys-at-law.
- “ ch. 141. Inheritance of wife's personal estate.
- “ ch. 187. Seats for female employes.
- “ ch. 234. Statistics of divorce.
- “ ch. 235. Decrees of divorce.
- 1883, ch. 43. Women's reformatory prison.
- “ ch. 157. Women's hours of labor.
- “ ch. 252. Women commissioners to administer oaths, &c.
- 1884, ch. 116. Female physicians in state lunatic hospitals.
- “ ch. 132. Transfer of property between husband and wife.
- “ ch. 149. Women trustees of state lunatic hospitals.
- “ ch. 219. Divorce.
- “ ch. 298, §§ 4 and 12. Women voters for school committees.
- “ ch. 301. Will and deeds of wife.
- 1885, ch. 7. Woman may be assistant register of deeds.
- “ ch. 94. Reformatory prison for women.
- “ ch. 173. Penalty for not supporting wife.
- “ ch. 255. Will and deed of wife.
- “ ch. 276. Widow inherits personal estate.
- “ ch. 302. Widow's right in family burial lot.
- 1886, ch. 36. Divorce.
- “ ch. 101. Temporary asylum for discharged female prisoners.
- “ ch. 150. Women overseers of the poor.
- “ ch. 177. Aid to women charged with crime.
- “ ch. 243. Release of insane husband's curtesy.
- “ ch. 305. Rape.
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- “ ch. 342. Fraudulent divorces.





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